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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/828,539	04/20/2004	Stanley L. Mills	362187-991221	3891
26379 7590 08/04/2009 DLA PIPER LLP (US) 2000 UNIVERSITY AVENUE EAST PALO ALTO, CA 94303-2248				
EXAMINER LAMPRECHT, JOEL				
ART UNIT 3737		PAPER NUMBER		
NOTIFICATION DATE 08/04/2009		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PatentDocketingUS-PaloAlto@dlapiper.com

Office Action Summary

Application No.

10/828,539

Applicant(s)

MILLS, STANLEY L.

Examiner

JOEL M. LAMPRECHT

Art Unit

3737

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3-23, 25-31, 33-42 and 65-67 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-23, 25-31, 33-42 and 65-67 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/18/09 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-16, 21-23, 25-31, 33-42, are rejected under 35 U.S.C. 103(a) as being unpatentable over Slater et al (6,066,083) in view of McIntire et al (US 2002/0022781 A1). Slater et al discloses an implantable seed device capable of being inserted into a body cavity for treatment that includes a gas surrounding a radioisotopic component (Col 4 Line 60-Col 5 Line 8), spacer elements for controlling the components inside of the device (Fig 7-22, Col 9 Line 25-40), parabolic surfaces defining a body chamber (Fig 1-22), gold coating to improve contrast (Fig 17, (Col 8 Line 60-Col 9 Line 15)), metals inside the device (Col 8 Line 60-Col 9 line 15), including shape memory metals (Fig 11, (Col 7 line 60-Col 8 Line 9)), the device has multiple

channels or voids (Fig 1-22), and comprises gas bubbles (Fig 21 and 22 (Col 9 line 25-50)).

Regarding claims 26-31, Slater et al does not disclose polymer inclusion into the device. Attention is then directed to the secondary reference to McIntire et al which discloses the inclusion of such polymers for the matrix supporting a radioisotope to be inserted into the body for brachytherapy (0030, 0042, 0056, 0062), including LCPs (0027) and also the use of titanium as a tube forming component (0094). It would have been obvious to one of ordinary skill in the art to have utilized the materials disclosed in the McIntire et al reference with the design of Slater et al for the purpose of providing materials and designs that allow for enhanced ultrasound visibility (Abs).

Claims 65 and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slater et al (6,066,083) in view of McIntire et al (US 2002/0022781 A1) as applied to claim 1 above, and in further view of Zappala (US 6,364,855 B1). Slater et al discloses all that is listed above, and includes gas in the seeds, but does not disclose what type of gas is included in the system. Attention is directed to the disclosure of Zappala which includes air filled microspheres for the enhancement of imaging during brachytherapy. It would have been obvious to one of ordinary skill in the art at the time of this invention to have utilized such a gas in the device of Slater et al in view of McIntire et al for the purpose of enhancing imaging views of the devices inside the body (Fig 2, Col 3 Line 25-34)

Claims 17-20 and 67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slater et al (6,066,083) in view of McIntire et al (US 2002/0022781 A1) as applied

to claim 5 above, and in further view of Yoshizumi (US 6,572,525 B1). McIntire et al discloses in 0032 that anchoring the device in the body is accomplished through roughing portions of the external surface, but does not specifically disclose a "docking guide". Attention is directed to the teaching reference to Yoshizumi which discloses the use of a proximal docking guide that allows acceptance of a radioactive source or spacer element and includes a non-locking port which is flexible (Fig 3, Col 3 Line 40-60, Col 5 Line 1-15 (Specifically reference to Grimm and Horowitz), Col 5 Line 50-Col 6 Line 30 and Col 7 Line 5-25). It would have been obvious to one of ordinary skill in the art to have incorporated the teachings of Yoshizumi into those of Slater et al in view of McIntire et al for the purpose of providing a seed/spacer element which is capable of customization in loading and also which allows for increased stability within the patient.

Response to Arguments

Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOEL M. LAMPRECHT whose telephone number is (571)272-3250. The examiner can normally be reached on 8:30-5:00 Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian L. Casler can be reached on (571) 272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BRIAN CASLER/
Supervisory Patent Examiner, Art
Unit 3737

JML